IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6262 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NAYNABEN PRAKASHCHANDRA DAYANI

Versus

DY. COLLECTOR STAMP DUTY VALUATION

Appearance:

1. Special Civil Application No. 6262 of 2002

MR SL VAISHYA for Petitioner No. 1

MS MITA PANCHAL, A.G.P for Respondent No. 1-2

CORAM : MR.JUSTICE A.R.DAVE

Date of decision: 05/08/2003

ORAL JUDGEMENT

1. RULE. Service of rule is waived by Ms.Mita

Panchal for the respondents. At the request of the learned advocates, the petition is finally heard today.

2. In this petition, an order dated 26th October, 1999 passed by the Chief Controlling Revenue Authority under the provisions of Section 32B of the Bombay Stamp Act, 1958 (hereinafter referred to as "the Act") has been challenged. By virtue of the impugned order, the said authority had confirmed the order dated 23rd December, 1997 passed by respondent no.1.

3. The petitioner had purchased a plot of land alongwith right in respect of terrace of a building for a consideration of Rs.1,48,690/- . It was found by respondent no.1 that the amount of consideration stated in the deed was on lower side and, therefore, after issuance of notice to the petitioner, he came to the conclusion that a sum of Rs.15,818/- should be recovered from the petitioner as deficit stamp fees. As the petitioner was aggrieved by the order dated 23rd December, 1997, the matter was referred to the Chief Controlling Revenue Authority under the provisions of Section 32B of the Act. After hearing the petitioner, the Chief Controlling Revenue Authority had dismissed the revision application.

4. Learned advocate Shri S.L. Vaishya appearing for the petitioner has submitted that unfortunately the petitioner could not remain present before respondent no.1 in pursuance of the notice issued to him. It has been submitted by learned advocate Shri S.L. Vaishya that in fact the valuation arrived at by respondent no.1 is not just and proper as no reason has been stated by respondent no.1 for determination of value of the land and right in respect of terrace, which had been purchased by the petitioner. It has been submitted by him that according to the policy laid down by the State of Gujarat reflected in the circular dated 31st July, 2001, which has been annexed to the petition, it is obligatory on the part of the concerned authority to state the reasons for which a different valuation is arrived at by the Deputy Collector. It has been submitted that the said argument was also submitted before the higher authority, but without considering the said argument, the reference was decided against the petitioner. In the circumstances, it has been submitted by him that the petition should be allowed and the impugned order should be set aside. It is however fairly submitted by the learned advocate for the petitioner that the petitioner did not remain present before respondent no.1 and therefore there was also fault on the part of the petitioner. The petitioner is

therefore ready and willing to pay costs to other side, if the petitioner is given an opportunity to lead evidence before respondent no.1.

5. On the other hand, learned A.G.P. Ms. Mita Panchal has submitted that the impugned order is just and proper. It has been submitted by her that there was total carelessness on the part of the petitioner because, inspite of issuance of notice to the petitioner by respondent no.1, the petitioner did not remain present and, therefore, respondent no.1 was constrained to decide the matter ex-parte. It has been submitted by her that the decision, which has been arrived at by respondent no.1, is just and proper and, therefore, the said decision has been duly upheld by the Chief Controlling Revenue Authority. It has been submitted by her that the petition deserves to be dismissed with costs.

6. I have heard the learned advocates and have also perused the relevant papers including the circular dated 31st July, 2001, a copy which has been annexed to the petition.

7. I find substance in what has been submitted by the learned advocate for the petitioner. Respondent no.1 has not given any reason for arriving at a particular valuation. He ought to have stated why he came to the conclusion that the valuation put by the petitioner in the sale deed was on the lower side. It is however clear that the petitioner had remained negligent and he did not even appear before respondent no.1 . However, before coming to the conclusion, respondent no. 1 ought to have discussed the reason for which he was enhancing the value of the property in question. Looking to the facts stated hereinabove and more particularly, when respondent no.1 has not stated any reason, his order is unjust and improper. Looking to the said fact, the Chief Controlling Revenue Authority ought not to have confirmed the order but ought to have remanded the matter to respondent no.1. In the circumstances, the petition deserves to be allowed. As stated hereinabove, the petitioner was also negligent as he did not remain present and did not make any submission before respondent no.1.

8. In the circumstances, the impugned order is quashed and set aside. The matter is remanded to respondent no.1 so as to decide it afresh. Respondent no. 1 shall issue fresh notice to the petitioner and after hearing the petitioner, he shall take appropriate decision and he shall also record the reason, if he comes

to a conclusion that value of the property is higher than what is stated in the sale deed, as stated in Circular dated 31st July, 2003.

9. The petitioner shall pay a sum of Rs.1,000/- to respondent no.1 towards costs. Upon payment of the said amount of costs, fresh notice shall be issued to the petitioner.

10. In view of the above order, the petition stands disposed of as allowed. Rule is made absolute.

(A.R. DAVE,J.)

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